that the standing of the first defendants was very good and a telegram to that effect was sent to the Plaintiffs after having been written out in his (Doulatram's) presence.

Again, the second defendants could give no satisfactory explanation of the stopping and dishonouring of their own cheque for $2,000 to Vengadasalam Chetty. This cheque, which was dated 31st December 1932, was only paid on the 5th January after Dass, first defendants manager, had told the Chetty to present it on that date. There are other unexplained circumstances, e.g. why the second defendants kept the godown rent receipt, which they got from the Chetty.

Dass, the first defendants' manager, was present during the hearing of the case, but was not called by the second defendants. He seems to have worked in close co-operation with them throughout.

On the whole, therefore, looking only at the evidence put forward on behalf of the second defendants, I am satisfied that they have not discharged the onus of proving good faith and absence of notice. I do not say they were guilty of deliberate fraud like the first defendants, but they saw an unhoped-for chance of getting their money back, and jumped at the occasion without troubling about the consequences.

If it were necessary to look at the evidence adduced on behalf of the plaintiffs, (which, in my opinion, it is not), I believe Abraham Penhas, whose evidence was quite unshaken in cross-examination, and the other witnesses, except Tejah Singh. Though in certain details Tejah Singh's evidence is corroborated, yet I think it safer to disregard it altogether.

There will be judgment with costs against both defendants for the return of the cases, 535 in number, or their value at $12.50 per case, i.e., $6,687.30; and I also award the plaintiffs $300—as general damages for the conversion.

I shall forward all the papers to the Deputy Public Prosecutor for any action he may consider advisable as regards the first defendants.

Judgment accordingly.

Solicitors for the Plaintiffs—*Presgrave & Matthews.*

Solicitors for the Second Defendants—*Hogan & Ivens.*

F.M.S.

(Original Civil Jurisdiction)

Thorne, Ag. C.J.

July 29, 1932.

A. M. M. MURUGAPPA CHETTY .....Chargee

vs.

THE OFFICIAL ADMINISTRATOR AS ADMINISTRATOR OF THE ESTATE OF YAP CHOK, DECEASED .....Chargor

(Selangor Civil Application No. 350 of 1931)

and

IN THE MATTER OF THE ESTATE AND EFFECTS OF YAP CHOK, DECEASED

and

IN THE MATTER OF SECTIONS 34 AND 35 OF THE PROBATE AND ADMINISTRATION ENACTMENT, 1920.

(Selangor Originating Summons No. 50 of 1932) (Heard together).

Probate and Administration Enactment, 1920, Sections 34, 35 and Rule 1—Administration of property of deceased chargor——Lien of Official Administrator—Powers of the Chief Secretary to fix commission payable.

When a chargee realises his security under the Land Code, in respect of the lands of a deceased chargor, the administrator of the estate of the latter can only be said to have administered to the extent of any surplus produced by the sale, after deducting the amount due on the charge for principal, interest and costs.

When such an administrator is the Official Administrator, his lien, under Section 35 of the Probate and Administration Enactment, 1920, only attaches to this surplus and does not take precedence or priority over charges registered under the Land Code.

By virtue of the provisions of Section 34, the Chief Secretary has power to prescribe by rule the rate of commission payable on the value of the property administered by the Official Administrator.

Rule 1, (Gazette Notification No. 8305 of 21st December 1928) made under the provisions of Section 34 is *ultra vires* the powers of the Chief Secretary in that it purports to make a commission payable on the gross value of the estate, merely on the act of taking over the administration, which is in direct conflict with the provisions of the Section.

R. Ramani for the Chargee.

R. C. Cussen, Deputy Legal Adviser, for the Official Administrator.

The civil application and the originating summons were heard together on the 21st and 29th July, 1932, before Thorne, Ag. C.J.

The facts appear sufficiently from the judgment below.

Thorne, Ag. C.J.—The Official Administrator is the Administrator of the estate of one Yap Chok (deceased) who I will hereafter refer to as the deceased.

By a charge which bears the date 19th day of November, 1925, the deceased charged certain lands,

of which he was the registered holder, to A. M. M. Murugappa Chetty, to whom I will hereafter refer as the chargee, by way of a first charge, to secure the repayment of $20,000 and interest. The deceased died testate on the 17th day of March, 1930, without having redeemed the charge.

On the 14th day of July, 1930, probate of the will of the deceased was granted to his executors, who failed to administer the estate, and on the 2nd day of November, 1931, the grant of probate was revoked, and letters of administration with the will annexed were granted to the Official Administrator.

The chargee applied to the Court, in Civil Application No. 350/31, for an order for sale of the charged premises, and by an order made in this matter on the 15th of January, 1932, a sale was ordered. On the 12th of April, 1932, the Official Administrator wrote to the Registrar of this Court claiming a sum of $705 as being due to him by way of commission on the total value of the lands, the subject of the charge, which were valued by the Collector of Estate Duty at $23,500. He further claimed that under the provisions of Section 35 of the Probate and Administration Enactment 1920, he was entitled to a lien upon these lands for the sum of $705, and asked the Registrar to see that sum was sent to him after the sale.

The Registrar fixed the reserve price at the sum of $24,000, made up as follows:—

Principal - - - -	$20,000.00
Interest to the 21st May, 1932 -	3,513.33
Costs - - - -	137.00
Expenses on sale - - -	340.00
or a total of - - - -	$23,990.33

The conditions of sale were not prepared by the chargee, but by the Registrar who inserted in the conditions of sale the following special conditions:—

> "The lands will not be transferred to the "purchaser until the sum of $705 has been paid to "the Official Administrator who holds a lien over "the grants for these lands, under section 35 of the "Probate and Administration Enactment, 1920."

The lands were offered for sale on the 31st day of May, 1932, but there was no bid. Meanwhile, on the 19th day of May, 1932, the chargee applied by Summons in Chambers to expunge the special condition from the conditions of sale. The Summons in Chambers came before Mudie, J. on the 26th of June, when it was adjourned for argument in open Court, and came on before me eventually on the 21st of July, 1932.

In Originating Summons No. 50/32 the Official Administrator asks for an order—

(i) that the lien of the Official Administrator under section 35 of the Probate and Administration Enactment 1920, on the property administered by him takes precedence over the charges registered under the Land Code and

(ii) that in order to safeguard his lien he is entitled to refuse to implement a transfer to a purchaser until his claims have been satisfied in full.

In Civil Applications 350/31 (the history of which I have already set out above), 353/31, 354/31, 4/32 and 5/32 the Official Administrator was cited as chargor, as representing the estate of the deceased.

In Civil Application 353/31 the charged land was sold by public auction, and bought in by the chargee at the sum of $18,910, which exceeded the amount of his total claim as chargee by the sum of $118.76. This amount was paid over to the Official Administrator, as forming part of the estate of the deceased.

The solicitor for the chargee then applied to the Official Administrator for the production of his grant of letters of administration, in order that the grant might be registered against the land, whereupon the transfer of the land to the chargee, as purchaser at the auction, could have been completed in terms of section 152 of the Land Code. The Official Administrator, however, claimed payment to him of his commission for administering the land, the subject of the charge, the gross value of which had been assessed by the Commissioner of Stamps at $25,000, and upon that sum commission was claimed at the rate of 3 per cent, or the sum of $750. The Chargee in this instance disputed his liability to pay, and it was agreed that a reference to the Court should be made for the determination of the question thus in difference. The same question will arise in the other matters, and it is unnecessary for me to set out in detail the history of these.

Sections 34 and 35 of the Probate and Administration Enactment are as follows:—

> 34. (i) When the property of a deceased person is administered by the Official Administrator under this Enactment no commission shall be allowed under section 27, but there shall be payable on the value of the property so administered a commission at such rate as may be from time to time prescribed by rule made by the Chief Secretary to Government and published in the Gazette, and such commission shall be credited to the public revenue.
>
> (ii) Where the commission payable under subsection (i) in respect of the property of any person administered by the Official Administrator would not amount to $10, there shall be payable in respect of such administration and in lieu of the said commission the sum of ten dollars.
>
> 35. The Official Administrator shall have a lien upon all such property for the reasonable expenses incurred by him in respect thereof in carrying out the provisions of this Enactment and for the commission, or sum in lieu of commission, payable under section 34, and such expenses and commission or sum, shall also constitute a first charge on the estate of the deceased.

In purported exercise of the powers conferred upon him by the provisions of sub-section (i) of section 34, the Chief Secretary to Government made rules, which appear as Gazette Notification No. 8305 of 21st December, 1928. The Official Administrator claims that he is entitled to the payment of a commission under the provisions of section 34, the rate of which is to be ascertained by the application of these rules, and he further claims that, the amount of his commission having been thus ascertained, he is entitled to a lien, under the provisions of section 35. It becomes necessary, therefore, to construe the provisions of these two sections, and in order to do so, to ascertain what passes to the Official Administrator and in what circumstances his right to claim payment of commission arises.

These two sections occur in Chapter III of the Probate and Administration Enactment, which chapter was substituted for the former State Enactments, and in the case of Selangor, for the Official Administrator's Enactment No. 7 of 1905. Provisions corresponding to those of section 34 do not appear in the original Selangor Enactment. That section opens with the words—

"When the 'property' of a deceased person etc."

It will be observed that the word 'property' is used in Section 28, 31, 32 and 33 in this Chapter, whereas in Sections 29 and 30 the words used to describe the assets of a deceased intestate are 'estate and effects.' Section 30 provides that—

> "upon the decease of a person dying intestate, and until letters of administration shall be granted in respect of his estate and effects, the estate and effects which were of such deceased person shall be vested in the Official Administrator."

Section 31 provides that the Official Administrator, as soon as he learns that any person has died intestate, leaving property in the Federated Malay States, may forthwith take possession thereof.

Section 29 makes provision for the grant to him of letters of administration to the estate and effects of an intestate.

Section 4 of the Probate and Administration Enactment provides that the executor or the administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the 'property' of the deceased person vests in him as such.

Section 14 provides that letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Section 68 of the Enactment provides that letters of administration shall have effect over all property, moveable or immoveable, of the deceased throughout the Federated Malay States. The form of grant of letters of administration provided by Section 81 of the Enactment refers to 'property' and 'credits' of the deceased. In addition to the sections to which I have referred, an examination of the Enactment shows that the word 'property' occurs also in Sections 50, 53, 101, 102, 147 and 148 of the Enactment. It will thus be seen that the legislature has not used the same language throughout either this chapter or the Enactment, when describing the same circumstances or set of facts.

In my view the words 'estate and effects' are synonymous with the word 'property,' and both mean assets of which the deceased person was competent to dispose in honesty for his own benefit at the time of his death. In other words, the Official Administrator succeeds to the beneficial rights and interests of the deceased and takes those rights and interests subject to the liabilities of the deceased at the time of his death.

In the case of this deceased, the Official Administrator succeeded to the rights of the deceased chargor in the lands, the subject of the charges, and if he had registered his grant of letters of administration, he would have become the registered proprietor of those lands. At the time of his death the deceased held these lands subject to the rights of the chargees, under the provisions of the Land Code; and the Official Administrator similarly holds these lands subject to the same rights.

In order to state the value in money of the rights of the deceased, I would put it thus. If the value of the land exceeded the amount due upon the charge, the amount by which the value of the lands exceeded the amount due, represented the beneficial interest of the deceased in these lands. But if upon the sale by the chargee it appears that the value of the lands is less than the amount due to the chargee, the deceased has no beneficial interest whatever in the lands. The section reads:—

> "When the property of a deceased person is administered by the Official Administrator under this Enactment."

The Official Administrator claims that he has administered the lands, the subject of these charges, and it is, therefore, necessary to examine what is meant by the words 'is administered.' The word 'administer' is well recognised as describing succinctly the duties of an executor or administrator in winding up the estate of the deceased.

The duties of an executor or administrator are set out in Chapter VIII of the Enactment and may be stated shortly as being to collect and get in all the assets of the deceased, to pay the debts, and (to use the language of section 102) to hand over the residue of the estate (if any) to the person or persons entitled thereto.

It is difficult to understand how the Official Administrator can possibly have administered the land,

Note.—Sections 34 and 35 of the Probate and Administration Enactment, 1920, have been repealed and amended by Section 5 of the Probate and Administration Enactment No. 31 of 1932, published in Gazette Notification No. 8365 of the 18th November, 1932, which came into force on the 1st January, 1933, vide Gazette Notification No. 8573 of the 18th November, 1932.—*Editor.*

the subject of the charge in this case, when he had in fact failed to register his grant of letters of administration against this land, in view of the fact that he had not before the registration of his grant completed the evidence of his title to deal with this land in due course of administration.

In the case of land subject to a charge the Official Administrator can of course pay off the charge, and sell the land, the subject thereof, free from incumbrances, in which case of course he will administer this asset. But if he is unable so to do, and the chargee sells in the exercise of his rights as such, can it be said that the Official Administrator has realised this asset? I think not.

The chargee sells as such under powers conferred upon him by the provisions of the Land Code in exactly the same manner as he would if the chargor were still alive.

In my opinion, in the case of lands of a deceased subject to a charge, if the chargee exercises his powers under the Land Code, and realises the security, the administrator can only be said to have administered to the extent of any surplus produced by the sale, after deducting the amount due to the chargee for principal, interest and costs. That surplus to my mind represents the true value of the rights of the deceased chargor in the charged lands. To take a converse case, suppose a chargee dies, and the Official Administrator is appointed to his estate and exercises the rights of the chargee in respect of the land, (thereby realising the principal and interest due to the estate of the deceased), he would then have administered the estate of the chargee by the exercise of the rights and powers of the chargee. These rights and powers the chargor has carved out of his interests in the land, and he is only entitled to what is left after satisfying the chargee, and that only passes on his death to his legal personal representative.

I am confirmed in this view by the reference in this section to section 27. That section provides that the Court may allow to administrators a commission not exceeding 5 per cent on the value of the assets collected by them, *i.e.* assets which they actually get in. Instead of this commission the section provides that there shall be payable a commission on the value of the property 'so administered.' It seems to me to be an abuse of language to say that an Official Administrator has administered property, when in fact the assets have been realised not by him but by the chargee in the exercise of the powers of a chargee, under the Land Code, which are superior, and possibly so exercised against his wishes, and where it is shown that the claims of the chargee exhaust the fund produced by the exercise of those rights.

I hold, therefore, that in respect of charged lands which are sold by the chargee in exercise of his powers of sale as such, the land the subject of the charge is not administered by the Official Administrator, and that his claim in this instance fails, because the land when sold did not realise more than sufficient to satisfy the claims of the chargee.

I will now proceed to consider the claim to a commission. Section 34 of the Probate and Administration Enactment empowers the Chief Secretary from time to time to prescribe by rule the rate of commission payable under this section. The section itself provides that the commission shall be payable on the value of the property administered by the Official Administrator, and the only power of the Chief Secretary to Government under this section is to fix the rate of such commission.

Rule 1 provides that the commission mentioned in the Schedule to the Rules shall be paid in respect of the duties referred to in that schedule. The first schedule deals with capital commission, and provides that on taking over the administration of an estate a commission based on the gross value of the estate at such of the following rates as may be applicable. To pause here for a moment, I would observe that this rule purports to make a commission payable on the gross value of the estate merely on the act of taking over the administration, which is in direct conflict with the provisions of the section, which as I have pointed out, provides for the commission being payable only on the value of the property administered by the Official Administrator. This provision I hold is entirely *ultra vires* the powers of the Chief Secretary. The rule then proceeds to set out certain scales which are chargeable at the discretion of the Official Administrator. I entertain great doubt whether these provisions also are not *ultra vires*, for the reason that the power of the Chief Secretary is to prescribe a rate of commission, and not to delegate the assessment of commission to the Official Administrator.

The second schedule provides for a commission on the sale of the property. This provision is within the powers of the Chief Secretary, since administration involves realisation, and incidentally, this scale supports the view that the remuneration of the Official Administrator should be assessed upon the value of the assets of the deceased realised and got in by him.

In my view, therefore, the claim of the Official Administrator to a commission on the gross value of land of the deceased chargor fails for two further reasons; first, because in the case of the land of a deceased chargor, it is not the un-encumbered full interest in the land which vests in him, but only the rights in that land, subject to the rights of the chargee under the Land Code; and secondly because the capital commission provided by the first schedule to the rules is *ultra vires* the powers of the Chief Secretary under section 34 of the Probate and Administration Enactment, and is not chargeable.

With regard to the lien claimed by the Official Administrator, under the provisions of section 35, I am of the opinion that no lien under that section can take priority over the rights of a first chargee under the Land Code. The section provides that 'he shall have a lien upon any such property' *i.e.* the property of the deceased person, administered by him.

I have already pointed out that on the death of the deceased chargor, the rights which pass to the administrator are only those which remain in the chargor at the time of his death, and the Official Administrator is in exactly the same position as the deceased chargor, he takes that which the deceased had and no more, and his lien can only attach to the extent of the interests of the deceased chargor in the land. For this reason I hold that the lien of the Official Administrator does not take precedence or priority over the charges registered under the Land Code.

This section is taken from section 8 of the old Enactment No. 7/1905, but has been amended to give the Official Administrator a lien for his commission, as well as for the expenses incurred by him in winding up the estate of the deceased. As I understood the construction placed upon this section by the Official Administrator, it is that he is entitled to a lien upon every asset which forms part of the estate of the deceased for his expenses and commission, but in my view this is a misconception of the true interpretation of the section.

If the Official Administrator is to be entitled to a commission upon the value of the assets of the deceased which he administers by realising those assets, the commission cannot in practice be calculated until the asset has been sold, and the value thus ascertained. At that stage the property in the asset thus sold will have passed to the purchaser, and it is difficult to appreciate how in practice a lien could be claimed upon an asset, such for example as a chattel, the property and possession in which have both passed, since it is the very foundation of a lien that possession should remain in him who claims the lien.

To pause here for a moment, it is noteworthy that the Official Administrator should in this instance find it necessary to ask the Registrar of the Court to collect the amount claimed, when the claim is made under a lien.

In my view the true interpretation of this section is that the Official Administrator is entitled to a lien on the estate of the deceased which remains in his hands at any given moment of time. The lien for commission does not attach necessarily to the specific assets in their condition as at the time of the death of the deceased, since no commission may have been earned, but the lien attaches to all assets which together form the estate of the deceased in the hands of the Official Administrator whether these assets are the proceeds of realisation or whether they are assets remaining unadministered in his hands.

The words the estate of the deceased' or 'estate of the 'intestate' occur in numerous sections of the Enactment—(see 21, 24, 25, 46, 47, 54, 57, 58, 59, 60, 67, 102, 127, 141, 145, 149, 150 and 151), and mean in my opinion all the assets which a legal personal representative holds from time to time in right of the deceased. From time to time these will vary as the process of administration proceeds, and may be assets in specie at the time of the grant or cash in hand when the estate is ripe for distribution. One can conceive of cases of the grant of letters of administration to the Official Administrator being subsequently recalled, as for example in the case of a supposed intestacy, and it being found later that the deceased died testate in which case the estate may be only partly administered. The estate would then consist of the assets of the deceased come to the hands of the Official Administrator in whatever state they were, some in specie, some the proceeds of realisation, and some perhaps partly realised, as in the case of a contract for the sale of land uncompleted at the date of the recall of the grant.

The lien under section 35 would attach to all assets of the deceased of which the Official Administrator had not disposed, and which therefore remained in his hands in right of the deceased. Applying this interpretation of this section to the facts here, the Official Administrator will be entitled to a lien on the balance of the proceeds of sale of the deceased's property which passed to him, after satisfying the claims of the chargee, but he will not be entitled to a lien upon the land, and his claim to enforce his right to commission against the purchaser of the land fails.

One other matter I should mention is this. In an attempt to force the purchaser of the charged lands to pay his commission, the Official Administrator has declined to register the grant of letters of administration to him, in order thus to hold up the completion of the sale conducted by the Officer of the Court. This is a course of action which is to be deprecated, and amounts, in my opinion, to an improper obstruction with the carrying out of the duties of the Registrar of the Court, under section 152 of the Land Code.

The Official Administrator was a party to the proceedings which resulted in the order for sale, and it was, in my opinion, his duty to comply loyally with the terms of that order for sale. The registration of the grant of letters of administration to him was an essential step in the effective carrying out of that order, and his neglect to register the grant of letters of administration has delayed the completion of the sale. I feel sure it is only necessary for me to point out the irregularity of the action of the Official Administrator to ensure that this does not recur.

The formal order will be that in Civil Application No. 350/31, the applicant succeeds, and an order will

be made in terms of the summons; in Originating Summons No. 50/32, the answer to both the matters raised is in the negative. The Official Administrator will pay the costs of both these proceedings out of the estate.

Order accordingly.

(Appellate Criminal Jurisdiction)

(Original Criminal Jurisdiction)

Between

TAN BAW ..... **Accused. Appellant.**

and

THE PUBLIC PROSECUTOR OF JOHORE ..... **Complainant Respondent.**

(Batu Pahat Criminal Case No. 1649 of 1932)

(Batu Pahat Criminal Appeal No. 12 of 1932)

Johore Land Enactment, Sections 11, 18, 132, & 135—Rules under Land Enactment 1910, Section 21 (ii)—Omission by landowner to obtain license from the Collector—Removal of gravel stone by appellant-accused from land with the permission of landowner—Payment by appellant-accused to landowner for gravel stone removed—whether appellant-accused thus chargable under Sections 11, 18, 132 & 135.

In a case where a landowner has omitted to obtain a license from the Collector of Land Revenue under Sections 11, 18, *et seq.* of the Johore Land Enactment 1910 and the rules made thereunder, for the removal from his land of materials or commodities, there can be no conviction under Section 132 or 135 of the same Enactment of a person who has obtained even the verbal permission of the landowner for the removal of any material or commodity for which the accused has paid the landowner.

Such a license is primarily issuable to the landowner or to another with the consent of the landowner.

The Appellant was charged in the Magistrate's Court at Batu Pahat under Sections 11 and 135 of the Johore Land Enactment 1910 on November the 27th 1932. The charge against him was one of removing gravel stone from land comprised in Johore Grant No. 9946 belonging to one Lim Cheng Poon of Tanjong Laboh, without a license. The Appellant pleaded not guilty and was fined $100.00 or in default thereof was sentenced to undergo two months' rigorous imprisonment.

The following facts were admitted: the appellant is a stone mason residing at Batu Pahat. He admitted removing the gravel stone and that the land from which it was taken did not belong to him. He said he had the permission of Lim Keok, the father of the owner of the land to remove therefrom the gravel stone and that he had paid him 50 cents per cart load therefor. The permission given by Lim Keok was verbal and the appellant proceeded to remove the gravel stone on the assumption that Lim Keok had the power to grant him this permission. Lim Keok was not called, as he was at the time unavailable.

The following provisions of the Johore Land Enactment 1910 and/or the rules made thereunder are material.

Section 11 of the Land Enactment 1910.

(i) Every title to land under this Enactment shall be deemed to vest in the person entitled thereunder a surface right only in the land to which title relates, and, in the absence of an express condition to the contrary in such title, shall convey no right to remove, without licence, beyond the boundaries of the said land any timber or other jungle produce, gravel, stone, coral, shell, guano, sand, loam or clay obtained from the said land, or any bricks, lime or other commodities manufactured from the materials aforesaid.

Section 18.

The Sultan in Council may, from time to time, make rules for fully and effectually carrying out and giving effect to the various purposes, provisions and powers in this Enactment contained and such rules, when published in the Gazette, shall have the force of law.

(xii) Issuing licenses to dig and remove gravel, stone, coral shell, guano, sand, loam or clay, or to remove bricks, lime or other commodities manufactured from the materials aforesaid provided that, in the case of land which now is or hereafter may be alienated, no such licence shall be issued except to the owner of such land or with his consent.

Section 132.

If any person, not licensed or otherwise authorised in that behalf under Section 18, shall cut, dig or take from any State land any product in such section mentioned, or remove or sell the same, every such person shall, on conviction before a Magistrate, be liable to a fine not exceeding $500-00, or, in default of payment thereof, to imprisonment of either description for a term not exceeding six months and, if the offence be in respect of any land reserved under section 9, to a fine not exceeding $1,000 or, in default of payment thereof to imprisonment of either description for a term not exceeding twelve months.

Section 135.

Any person offending against the provision of any section of this Enactment for which no penalty is otherwise by this Enactment provided shall be liable, on conviction before a Magistrate, to a fine not exceeding $100, or, in default of the payment thereof, to imprisonment of either description for a term not exceeding four months.

Rules under Land Enactment 1910.

21(ii) In like manner and subject to like conditions the Collector may issue to any person a license to dig and remove or to remove as the case may, from any alienated land any of the said articles which the owner of such land may by the conditions of the title under which the land is held, be prohibited from removing, provided that no such license shall be issued except to the owner of the land or with his consent.

Osborne-Jones for Appellant.

Section 11 of the Land Enactment 1910 provides for surface rights only to a little holder. To acquire mineral rights in the land a license must be obtained from the Collector and under the same section the license can only be granted to a title holder. Likewise under section 18 (xii) of the Land Enactment the same